

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

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APR 27 1999

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

CC Docket No. 96-98

In the Matter of )

 Implementation of the Local Competition )  
 Provisions in the Telecommunications Act )  
 of 1996 )

 Inter-Carrier Compensation )  
 for ISP-Bound Traffic )

CC Docket No. 99-68

To: The Commission

**REPLY COMMENTS OF THE  
 PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association ("PCIA") hereby submits these Reply Comments in the captioned proceeding. In its Comments, PCIA urged the Commission to adopt flexible rules governing the nature and extent of telecommunications carriers' rights under Section 252(i) of the Communications Act, as amended (the "Act"). PCIA supported a flexible approach in light of the critical role Section 252(i) plays in interconnection negotiations by preventing discrimination among all types of carriers and evening the bargaining power between incumbent local exchange carriers ("ILECs") and other telecommunications carriers.

Several other commenters also conveyed the importance of Section 252(i) to the

negotiation process.<sup>1/</sup> These commenters represent the vast majority of non-ILEC parties who addressed this issue. In light of the broad recognition of the significant role of Section 252(i) in reaching fair interconnection agreements, PCIA reiterates its request that the Commission adopt flexible rules governing the exercise of these important rights so that they can remain the effective tool envisioned by Congress.

PCIA limits the substance of these Reply Comments to a single argument asserted by a sole commenter which misinterprets the meaning and severely limits the rights conferred by Section 252(i). Ameritech argues that Section 252(i) does not apply to reciprocal compensation because “it is not interconnection; it is not a service provided by an incumbent LEC; and it is not a network element.”<sup>2/</sup> This argument is without merit and the Commission must recognize it as such.

Section 252(i) requires that LECs make available any interconnection, service or network element contained in a previously approved agreement on the same terms and conditions as the original agreement.<sup>3/</sup> While reciprocal compensation provisions are not a type of interconnection (*e.g.*, like end-office or tandem interconnection) they *are* a term or condition of interconnection. The existence of the interconnection arrangement is what permits traffic to be transferred from one network to another. The amount each carrier charges for its transport and

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<sup>1/</sup> See, Comments of AirTouch Paging, pp. 3-6; Association for Local Telecommunications Services, pp. 19-22; CompTel, pp. 16-17; GST Telecom, p. 21-24; MCI Worldcom, pp. 20-22. PCIA notes that the AirTouch Paging Comments raise some additional issues with respect to Section 252(i) which PCIA believes warrant further consideration.

<sup>2/</sup> Ameritech Comments, p. 22.

<sup>3/</sup> 47 U.S.C. § 252(i).

termination of that traffic pursuant to agreement is an integral factor in that interconnection arrangement -- one over which parties enthusiastically negotiate in the context of interconnection agreements. Thus, because it is inextricably linked to the interconnection arrangement, a reciprocal compensation provision is a term of that arrangement.

The inclusion of reciprocal compensation provisions within the scope of Section 252(i) is apparent from the *Local Competition First Report*.<sup>4/</sup> The portion of the order discussing Section 252(i) and adopting Section 51.809 of the rules<sup>5/</sup> reflects that the Commission has interpreted Section 252(i) as permitting the adoption of any provision within a previously approved agreement *or the adoption of the agreement in its entirety*.<sup>6/</sup> By this all-inclusive interpretation, the Commission intended that all provisions of an interconnection agreement, including those pertaining to reciprocal compensation, would be subject to the rights conferred by Section 252(i). The right to adopt an interconnection agreement *in toto* was upheld both at the Eighth Circuit and the Supreme Court.<sup>7/</sup> Neither the Eighth Circuit nor the Supreme Court indicated that any specific sections of interconnection agreements should be excluded from the scope of the rights granted by Section 252(i).<sup>8/</sup>

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<sup>4/</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd. 15,499 (1996).

<sup>5/</sup> 47 C.F.R. §51.809.

<sup>6/</sup> *Id.*, paras. 1309-1323.

<sup>7/</sup> *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8<sup>th</sup> Cir. 1997), *modified on rehearing*, Slip. Op. (8<sup>th</sup> Cir., Oct. 14, 1997); *aff'd in part and rev'd in part*, *AT&T v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999).

<sup>8/</sup> Indeed, both courts noted their belief that the adoption of *all of the provisions* of a previously approved agreement may be the most fair to parties, who may have agreed to concede

In fact, the right to adopt a previously approved agreement *in toto* was precisely what the ILECs advocated. Both before this Commission and the two courts hearing the appeals of the *Local Competition First Report*, ILECs, including *Ameritech*, argued that carriers seeking to exercise their rights under Section 252(i) were required to adopt the entire underlying agreement without modification.<sup>9/</sup> The ILECs argued that this was the only interpretation of Section 252(i) that was fair in light of *quid pro quo* type concessions made in the course of agreement negotiations. The ILECs did not exclude any agreement provisions, including reciprocal compensation, from this argument. PCIA respectfully submits that *Ameritech* cannot have it both ways. The Commission must not permit *Ameritech* to argue that agreements must be adopted *in toto* because “pick and choose” is unfair and later engage in a “pick and choose” of its own with respect to reciprocal compensation.

*Ameritech* next asserts that Section 252(i) does not apply to reciprocal compensation provisions because different carriers have differing costs.<sup>10/</sup> This position is contrary to both the plain language and spirit of the statute. The fact that carriers adopting a previously approved agreement may have different costs than the original carrier is irrelevant. Carriers are not likely to have identical costs, especially in the context of a competitive environment where carriers constantly are striving to reduce costs and increase efficiency. Even

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on one issue in exchange for the other party’s concession on another issue. *Iowa Utils. Bd. v. FCC*, 120 F. 3d at 801; *AT&T v. Iowa Utils. Bd.*, 119 S. Ct. at 738.

<sup>9/</sup> See, Comments filed in CC Docket 96-98 by *Ameritech*, pp. 98-99; *BellSouth*, p. 81; *Bay Springs, et. al.*, p. 19; *GTE*, p. 83; *SBC*, p. 24; *USTA*, p. 96-97; see also, *FCC v. Iowa Utils. Bd.*, Case No. 97-831, consolidated with *AT&T v. Iowa Utils. Bd.*, *supra*.

<sup>10/</sup> *Ameritech* Comments, p. 24.

so, in an effort to foster telecommunications carriers' ability to reach fair interconnection agreements with LECs, Congress passed Section 252(i) which permits carriers to adopt provisions of agreements or entire agreements previously approved between a LEC and another carrier. The statute does not require that the requesting carrier have identical or equal costs to those of the carrier to the underlying agreement. To impose such a requirement would effectively nullify Section 252(i).

Ameritech also asserts that carriers with different costs should not receive identical reciprocal compensation payments.<sup>11/</sup> However, the Commission already has addressed this issue in the adoption of proxy and symmetrical rates. In the interest of fostering fair interconnection agreements in a timely fashion, the FCC has approved the use of proxy and symmetrical rates as an alternative to individualized rates demonstrated in the course of cost proceedings or by cost studies. The idea that Section 252(i), enacted with the intent of fostering fair agreements on an expedited basis, would not also entail the adoption of compensation rates outside of the scope of a cost proceeding or cost study is contrary to the intent of the provision.

In sum, Ameritech's argument misinterprets the language and intent of Section 252(i), ignores Commission and court rulings on the scope of the rights conferred thereby, and would eviscerate the protections granted thereby. PCIA respectfully requests that the Commission reject Ameritech's argument and confirm that *all* provisions of previously approved interconnection agreements, including those pertaining to reciprocal compensation and inter-carrier compensation, are subject to the rights granted by Section 252(i).

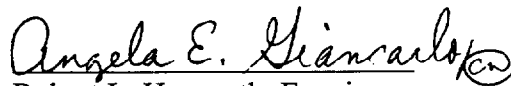
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<sup>11/</sup> *Id.*

WHEREFORE, the foregoing having been duly considered, PCIA respectfully requests that the Commission adopt rules consistent with the positions contained in these Reply Comments.

Respectfully submitted,

PERSONAL COMMUNICATIONS  
INDUSTRY ASSOCIATION

A handwritten signature in cursive script that reads "Angela E. Giancarlo". The signature is written in dark ink and includes a stylized flourish at the end.

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April 27, 1999

### CERTIFICATE OF SERVICE

I, Sabrina Underwood, do hereby certify that I have on this 27<sup>th</sup> day of April, 1999, caused true and correct copies of the foregoing REPLY COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION to be sent by first-class United States mail, postage prepaid, or by hand delivery to the following:

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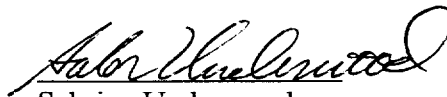
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